IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/09/2004

Coram

The Honourable Mr.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
The Honourable Mr.Justice A.KULASEKARAN

Writ Appeal No. 3437 of 2004
and
W.A.M.P.No. 6442 of 2004

The Government of Tamil Nadu
Rep. by its Secretary,
Home Department,
Fort.St.George,
Chennai 600 009. .. Appellant

-Vs-

1. The Secretary
Review Committee on POTA,
Room No.246, Vigyan Bhavan Annexe,
New Delhi.

2. R.R.Gopal @ Nakkeeran Gopal,
105, Jani Jahakhan Street,
Royapettah,
Chennai 600 014.

3. A. Kamaraj

4. S. Ramanathan

Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No.26265 of 2004 dated 14.09.2004.

!For Appellant .. Mr.A.L.Somayaji,
Addl.Advocate General
Assisted by
Mr.V.Raghupathy,
Government Pleader, and
Mr.C.Mani Shankar,
Special Public Proseucotr

^For 2nd Respondent.. Mr.R.Shunmugasundaram
Senior Counsel for

Mr.P.T.Perumal

:J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

This writ appeal is directed against the order dated 14.09.2004 rendered by the learned single Judge in W.P.No. 26265 of 2004. The matter arises under Prevention of Terrorism Act, 2002 (herein after referred to as "POTA"). Section 60 of POTA, as originally enacted, contained only three sub-Sections and subsequently, sub-Sections 4 to 7 were added by an amendment and they were subject of challenge before this Court in W.P.Nos.1238 to 1240 of 2003. The respondents 2 to 4 were respondents too in the above writ petitions along with others. The Division Bench of this Court, to which one of us (Chief Justice) was a party, upheld the constitutional validity of Sub-sections 4 to 7 as introduced by Central Act 4 of 2004 by explaining Sub-section (7) to the effect that if the Review Committee finds no prima facie case in the criminal proceedings under POTA, then the State Government is bound by the said decision and Section 321 of Code of Criminal Procedure (in short 'Cr.P.C') has to be followed. The said judgment has been reported in GOVERNMENT OF TAMIL NADU v. UNION OF INDIA (2004 (1) CTC 641). The judgment of this High Court was upheld by the Supreme Court.

2. There are two sets of respondents. In the one, where Mr.Vaiko and others were the accused, charge sheets were laid and the charges were framed after rejecting the arguments of the above accused that no case was made out for framing the charges. That order declining to discharge the above accused and consequently, framing the charges had become final. Taking the said factual matrix into consideration, and making a distinction as to status of criminal cases before framing of charges, and after framing of the same, it was held that after the charges are framed, there is no question of discharge from the prosecution, as the question of discharge arises before the charges are framed and after the charges are framed, if the prosecution is withdrawn under Section 321 Cr.P.C, it amounts to acquittal.

3. In this case, the stage of the prosecution did not travel that long, as the Supreme Court stayed the filing of the charge sheet and still the said stay is in operation. While staying the filing of the charge sheet for a stipulated time, the Supreme Court directed the Review Committee for POTA to submit its report, latest by 30.09.2004. Respondents 2 to 4, who stand accused in the prosecution case launched by the State under POTA, are now required to participate in the proceedings before the Review Committee, which is slated for enquiry from 16.09.2004 onwards. The POTA-Review Committee is bound to submit its report in accordance with the directive of the Supreme Court and the respondents 2 to 4 are entitled to participate and project their rights for wriggling out of the prosecution and for that purpose, they require the documents, which are being relied upon by the State for prosecuting respondents 2 to 4.

4. The writ petition has been filed assailing the requisition made by Review Committee in issuing directions to furnish documents to respondents 2

to 4. The objections put forth by the State, which is the appellant herein, before the learned Single Judge was that the documents, as ordered by the Review Committee, cannot be furnished at this stage, because of the privilege under Section 30 of POTA and also because criminal procedure code is made applicable to POTA prosecutions.

5. Mr.A.L.Somayaji, learned Additional Advocate General, has cited the Full Bench Judgment of this Court reported in SELVANATHAN @ RAGHAVAN Vs. STATE BY INSEPCTOR OF POLICE (1988 L.W. (Crl.) 503) in support of his contention that prior to filing of the charge sheet in the Special Court trying respondents 2 to 4, the copies of the documents cannot be furnished to them as it would prejudice the trial, which ultimately, will be adverse to public interest. It is also stated that apart from respondents 2 to 4, there are other accused also and it is not at all desirable in the interest of the prosecution to furnish the documents. He, further, submitted that the order of the Review Committee in directing furnishing of documents to respondents 2 to 4 is bereft of reasons and is thus no order in the eye of law. For this proposition, he has cited the judgment reported in STATE OF PUNJAB Vs. BHAG SINGH (2004 (1) SCC 547).

6. Countering the above arguments advanced on behalf of the writ appellant/State, Mr.Shunmugasundaram, learned senior counsel appearing for respondents 2 to 4, submits that the stand of the appellant is untenable and that Audi Alteram Partem rule has got to be followed and cited the judgments SWADESHI COTTON MILLS Vs. UNION OF INDIA (1981 (1) SCC 664), STATE OF U.P Vs. SHATRUGHAN LAL (1998 (6) SCC 651), DEEPAK PURI Vs. STATE OF HARAYANA (2000 (10) SCC 373) and GOVERNMENT OF TAMIL NADU v. UNION OF INDIA 2004 (1) LW 5).

7. The learned single Judge did not decide the case on merits and dismissed the writ petition on the ground of matter being sub judice before the Supreme Court. We do not concur with the approach of the learned single Judge for the reason that the lis in the instant case is not the subject matter of the case pending before the Supreme Court. The point at issue is whether the documents as directed by the first respondent to be furnished to respondents 2 to 4 by the appellant can be ordered to be furnished at this stage or not. It is already stated above, there is no charge sheet under law. Even if the charge sheet has been made ready, but the same has not been filed into Court as contemplated under Section 173(2) Cr.P.C. Without there being charge sheet the question of framing of charge does not arise and Section 321 Cr.P.C has got no application to the facts of this case. If that be so, if the Review Committee takes a decision under sub-Section (4) of POTA that there is no prima facie case, then the same is binding on the State Government because of the mandate contained in sub-clause (i) of sub- Section (5) thereof. The question of filing even the charge sheet may not arise, should the decision of the Review Committee be adverse to the appellant. If the Review Committee comes to a decision that there are no prima facie case in prosecuting respondents 2 to 4 under POTA, the same would have the effect of preempting filing of the charge sheet. The legal position has to be viewed in this context. True, in the Full Bench judgment SELVANATHAN @ RAGHAVAN Vs. STATE BY INSEPCTOR OF POLICE (supra) cited by Mr.A.L.Somayaji, learned Additional Advocate General the legal principles have been stated that the

accused has no right to get documents before filing of the charge sheet.

8. But the fact situation coupled with the legal implications in the instant case, are not present in the Full Bench Judgment of this Court, which is cited supra. Section 173(2) Cr.P.C as interpreted by this Court in the above decision has to be understood for an ordinary criminal trial without the intervention of Review Committee like the instant one. The State Government cannot wriggle out of the decision of the Review Committee should it go adverse to it that there is no prima facie case in the prosecution. It does not matter, whether respondents 2 to 4 did not make any special application for furnishing the copies. The Review Committee, has ample powers to order furnishing copies when situation is brought to its notice. The stand of the appellant/State, if accepted, will result in violation of Audi Alteram Partem rule. Furnishing of documents as directed by the Review Committee is essential and vital for effective representation by respondents 2 to 4, which is the essence of POTA Review Committee/ Enquiry. Non- furnishing of the reasons by the Review Committee also do not come in the way of furnishing of documents by the State, as the purport of directions of Review Committee has to be taken into consideration, and not the reasons for furnishing such documents. The reasons are implicit and they are well guided by the principles of natural justice. It is undeniable that without there being documents in the hands of respondents 2 to 4, there cannot be effective representation by respondents 2 to 4, which results in constitutional infraction.

9. For these reasons, we uphold the order dated 11.09.2004 passed by the Review Committee on POTA and direct the appellant/State to furnish the documents to respondents 2 to 4, as directed by the Review Committee, by 2.00 p.m. tomorrow (15.09.2004).

10. The writ appeal is disposed of accordingly. No costs. Consequently, W.A.M.P is closed.

Index: Yes
LR Entry:Yes
Internet:Yes
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